



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,037	12/15/2003	Carrie Melinda Kincaid	1410-77005	4023
48940 7590 06/25/2008 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 06/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/736,037

Applicant(s)

KINCAID ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9, 11, 12, 14-22 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 11, 12, 14-22 and 25-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicants' amendments to the claims are sufficient to overcome the rejections using Bowers as further evidenced by Joslyn and further in view of Musser.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, 11, 12, 14-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (2,968,628) as further evidenced by Joslyn and in view of Villagran (5,490,999).

Reed discloses a propellant composition for foods. In example 8 peanut spread is prepared with the propellant and contained homogenized peanut butter and peanut oil. The combination is used in a pressurized container (column 1, lines 54-57). The claims appear to differ from Reed in the recitation of the composition of the homogenized peanut butter. Villagran teaches a reduced fat peanut spread containing 53% peanuts, molasses, stabilizer, mono- and diglycerides emulsifier, soy protein isolate, corn syrup solids and nutrients (example I). Alternative emulsifiers are shown at column 4,

lines 15-18. The peanut butter is prepared by mixing and homogenization. It would have been obvious to one of ordinary skill in the art to utilize the homogenized peanut butter of Villagran in the pressurized container of Reed as an example of homogenized peanut butter. It is appreciated that plant fiber is not mentioned but applicant described peanuts as including plant fiber. To the extent that peanuts are composed of peanut oil and peanut solids, one of ordinary skill in the art would expect the peanut product of Villagran to include the extent of plant fiber and peanut oil that is in the claims. Water would be an expected ingredient of molasses and corn syrup solids. Although the density of the composition was not measured, one of ordinary skill in the art would expect the composition of Vi;agran to have the density of the claims. Joslyn is cited for further evidence of the density of foods. At the top of page 202, line 5, relative density and specific gravity are defined as equivalent terms. In the middle of page 202 the density of water is described as being at about 1.0. At the bottom of page 202, last paragraph, specific gravity is described as being a measure of the concentration of soluble solids in syrups, brines, fruit juices and beverages. At page 202, in Figure 11, the specific gravity of sucrose, tomato juice and salt are shown at varying

concentrations. With the evidence of Joslyn at Figure 11, one of ordinary skill in the art would expect the density or specific gravity of the peanut composition of Villagran to have the density of the claims because of the extent of water, sugar and solids in the composition. It is appreciated that alternative emulsifiers are not mentioned but Villagran provides for the use of more than one emulsifier in his composition. It is appreciated that dairy protein concentrate is not mentioned but dairy protein would have been an obvious prein alternative to soy protein isolate.

Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed as further evidenced by Joslyn and in view of Villagran as applied to claims 1, 4-9, 11, 12, 14-22 and 25 above, and further in view of Food Engineering article.

The claims appear to differ from Reed as further evidenced by Joslyn in view of Villagran in the recitation of the use of the particular container used in the product. Food Engineering teaches that aerosol containers with floating plungers are known in the art. This article also draws equivalence between the two aerosol and piston type filling containers. No unobvious or unexpected result is seen from the use of one pressurized can or the other.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Art Unit: 1794

Primary Examiner 1794